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Attorney for Defendant DAVID MISHLER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID MISHLER,

Defendant.

Case No. 19-00105-RS

ERRATA DECLARATION OF
MARK CLAUSEN IN SUPPORT
OF MOTION BY DEFENDANT
FOR COMPASSIONATE
RELEASE AND MODIFICATION
OF SENTENCE TO ALLOW
DEFENDANT TO SERVE THE
REMAINING 5-MONTHS OF HIS
SENTENCE ON IN-HOME
CONFINEMENT DUE TO
HEALTH RISKS FROM COVID-19
[18 U.S.C. Section 3582(c)(1)(A)
and 18 U.S.C. § 4205(g), aka "The
Care Act. H.R. 748"];

Hearing Date: July 21, 2020
Time: 2:30 p.m.
Judge: Hon. Richard Seeborg
Location: Courtroom 3, 17th Floor
455 Golden Gate Ave.
San Francisco, CA 94102

I, Mark T. Clausen, do hereby declare:

1. I am the attorney for Defendant David Mishler (MISHLER). I have personal knowledge of the facts set forth in this declaration and would competently testify thereto if called to do so.

2. MISHLER's motion and my supporting declaration were in error in stating the following italicized facts: "MISHLER is ... a large man and is considered by doctors to be overweight and he has moderate health conditions associated with obesity such as *high cholesterol and high blood pressure* which are also increased risk factors for COVID-19."

1 (Clausen Decl., para. 16, italics added.)

2 3. MISHLER has now informed me that he has not been diagnosed with high cholesterol
3 and high blood pressure, but rather with pre-diabetes. MISHLER has also advised me that when
4 he began his prison incarceration in January 2020 he weighed 330 pounds while standing 6-feet
5 and 1-inch tall. (A true copy of his prison intake information is attached as Exhibit 1.)
6 MISHLER states that he believe he is about 320 pounds now. This makes him “highly obese”
7 based on the Body Mass Index (BMI) available on line at numerous websites including, for
8 example, www.AARP.org .

9 4. The above described error came to light as follows: This motion was filed on
10 Thursday, June 25, 2020. On Saturday, June 27, Assistant US Attorney Jonathan Lee emailed
11 me in response to my email concerning the motion. Assistant U.S. Attorney Lee’s email asked if
12 MISHLER had any medical records available to support his claimed health conditions. I relayed
13 that request to MISHLER’s wife via email and pointed her to the health conditions identified in
14 the motion and my supporting declaration. She responded by email on Sunday, June 28, and
15 advised that MISHLER has not been diagnosed with high cholesterol and high blood pressure,
16 but rather with pre-diabetes, and she further stated that she does not have any medical records in
17 her possession which show that diagnosis but she believes that information is found in
18 MISHLER’s prison medical file. I immediately conveyed this to attorney Lee via email on
19 Sunday June 28. Later the same day, MISHLER communicated with me and confirmed the
20 information provided by his wife, and he also stated that he had requested a copy of his medical
21 records from prison officials and has been told that it will take at least 21 days and probably
22 longer for the records to be provided to him.

23 5. The erroneous information in the motion and my supporting declaration was not
24 provided to me by MISHLER as I asked his wife for his general health history and then added
25 that information to the previously-prepared motion which MISHLER had reviewed.
26 MISHLER’s wife has informed me that she does not recall stating that MISHLER has “high
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1 cholesterol and high blood pressure” due to his age and obesity, only that he has “pre-diabetes.”
2 She has further stated that she did not catch that error when reviewing the motion after coming
3 off the graveyard shift at the hospital where she works as a nurse.

4 6. Given this, I must presume that the error was mine. I apologize to the Court and the
5 Government for the mistake and I have now corrected the record. Due to the error and to
6 otherwise afford the Government a full and fair opportunity to respond to MISHLER’s motion, I
7 have stipulated to an extension of time to July 6 or 7, 2020, for the filing of the Government’s
8 response to the motion which is currently due tomorrow, Tuesday June 30, per Order of the Court
9 issued Friday, June 26. I understand that DOJ will be e-filing the stipulation today. I also
10 understand that DOJ has requested, or soon will request, copies of MISHLER’s prison medical
11 records in an effort to expedite their receipt. Assistant US Attorney Lee is thanked for his
12 efforts in that regard.

13 7. In closing, MISHLER has asked that I also inform the Court that at least one
14 Correctional Officer in his prison facility recently tested positive for COVID-19, which has
15 increased MISHLER’s concerns about the health risks the virus poses to him while in prison. I
16 have not attempted to confirm this information with prison officials.


17 I hereby declare that the foregoing is true and correct under penalty of perjury of the laws
18 of the State of California. So declared this 29th day of June 2020 in Santa Rosa, California.

19 /S/ Mark T. Clausen
20 Mark T. Clausen

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Last Name	MISHLER
First Name	DAVID
Middle Name	
Suffix	
Height	6'01"
Weight	330
Hair	BLACK
Regno	25426-111
Eye	BROWN
Facility	ATW

2020-01-03



Ex. 1

PROOF OF SERVICE BY EMAIL

I, Mark T. Clausen, do hereby declare:

1. I am the attorney of record for Defendant David Mishler. I am over the age of 18 and I am not a party to this action. My business address is Law Office of Mark T. Clausen, 1325 Crestview Court, Santa Rosa, CA 95403.

2. On June 29, 2020, I served the attached document (*Errata Declaration by Mark T. Clausen*) through the Court's e-filing and e-service system and by direct email, as follows:

Jonathan Lee, Esq.
Assistant United States Attorney
United States Department of Justice
1301 Clay Street, Suite 3405
Oakland, California 94612
Email: jonathan.lee@usdoj.gov

Attorney for Plaintiff U.S.A.

Alena Kokich
Probation Services Assistant
U.S. Probation
Northern District of CA
450 Golden Gate Ave.
San Francisco, CA 94102
Email: Alena_Kokich@canp.uscourts.gov

Probation Services

I hereby declare that the foregoing is true and correct under penalty of perjury of the laws of the State of California. So declared this 29th day of June 2020 in Santa Rosa, California.

/s/ Mark T. Clausen
Mark T. Clausen

